

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

In re: UPSTREAM ADDICKS AND BARKER  
(TEXAS) FLOOD-CONTROL RESERVOIRS

Sub-Master Docket No. 17-9001L

Judge Charles F. Lettow

THIS DOCUMENT APPLIES TO:

ALL UPSTREAM CASES

**UPSTREAM PLAINTIFFS' NOTICE OF PROPOSED AGENDA FOR  
MARCH 21, 2022 STATUS CONFERENCE**

In anticipation of the status conference scheduled for March 21, 2022, upstream co-lead counsel submits the following items as an agenda for the Court's consideration:

**PENDING MOTIONS**

1. Government's Motion in Limine to Exclude Expert Testimony. The motion (ECF No. 432) seeks to exclude the opinions and testimony of Dr. Randall Bell and Dr. Philip Bedient from the upcoming Just Compensation trial. Upstream Plaintiffs view both experts, and their respective opinions, as relevant to the determination of the just compensation due the six Test Property Plaintiffs (ECF No. 433). The Government's reply in support has been filed (ECF No. 439). This motion is fully briefed.

2. Upstream Plaintiffs' Motion to Exclude Expert Testimony [Frank Lucco]. The motion (ECF No. 451) seeks to exclude Mr. Lucco's testimony from the upcoming Just Compensation trial on the basis that Mr. Lucco's opinions are neither relevant nor reliable. The Government's response is due on or before March 25, 2022.

3. Upstream Plaintiffs' Motion to Exclude Expert Testimony [Dan Leistra-Jones]. The motion (ECF No. 452) seeks to exclude Mr. Leistra-Jones's testimony from the upcoming Just Compensation trial because it is simply the repackaging of the government's legal theory as

“economic” analysis and basic math. As such, Mr. Leistra-Jones’s opinions constitute inappropriate expert opinion testimony. The Government’s response is due on or before March 25, 2022.

4. Upstream Plaintiffs’ Motion to Exclude Expert Testimony [John Postava]. The motion (ECF No. 453) seeks to exclude Mr. Postava’s testimony from the upcoming Just Compensation trial on the basis that Mr. Lucco’s opinions are neither relevant nor reliable. The Government’s response is due on or before March 25, 2022.

5. Upstream Plaintiffs’ Motion to Exclude Evidence and Testimony [Co-Tenants]. The motion (ECF No. 454) seeks to exclude the introduction of evidence or testimony concerning any co-tenant’s ownership interest on the basis that it is not relevant to the just compensation owed by the Government to the six Test Property Plaintiffs. The Government’s response is due on or before March 25, 2022.

6. Upstream Plaintiffs’ Motion to Exclude Evidence and Testimony [Offsets]. The motion (ECF No. 455) seeks to exclude the introduction of evidence or testimony arguing that the Court “offset” the just compensation awards owed the six Test Property Plaintiffs by the amount in value of certain general benefits available to all United States citizens inside or outside the Addicks and Barker reservoirs, and on the additional basis that the government’s position would require the Court to violate the constitutional separation of powers doctrine. The Government’s response is due on or before March 25, 2022.

7. Upstream Plaintiffs’ Motion to Exclude Evidence and Testimony [Pre-Decisional Information]. The motion (ECF No. 456) seeks to exclude the introduction of any evidence or testimony relating to topics for which the Government moved, and the Court agreed, were protected from fact discovery by the deliberative process privilege. The Government’s response is due on or before March 25, 2022.

8. Upstream Plaintiffs Motion to Exclude Expert Testimony [David LaRue]. Upstream Plaintiffs plan to file one additional motion in limine seeking the exclusion of David LaRue, whose second deposition was recently completed.

### **PRETRIAL PROGRESS**

9. Motions in Limine. All motions in limine now on file will be fully briefed by the May 2, 2022 Status Conference. Upstream Plaintiffs would like to discuss how the Court plans to handle these motions and if additional hearings should be scheduled to work through them.

10. Pretrial Stipulations. The parties have conferred on joint stipulations and will exchange drafts of proposed stipulations in advance of the Just Compensation Trial.

### **TRIAL PLANNING**

11. Confidential Information. Certain of the six Test Property Plaintiffs may be asked questions concerning Interrogatory Responses which have been designated by Upstream Plaintiffs as Attorneys Eyes Only, and which contain highly sensitive information concerning their personal income taxes. Upstream Plaintiffs are concerned about the possibility that this information will become part of a public trial record and would like to discuss how the Court intends to deal with confidential tax information, and more generally, any relevant Confidential information belonging to the Government.

12. COVID Protocols. Upstream Plaintiffs would like to know if the Court, through its conversations with the Southern District of Texas, or in consultation with other authorities, has any new thoughts on COVID safety protocols and/or accommodations for trial.

Dated: March 18, 2022.

Respectfully submitted,

/s/ Daniel H. Charest

Daniel H. Charest  
E. Lawrence “Larry” Vincent  
Burns Charest LLP  
900 Jackson Street, Suite 500  
Dallas, Texas 75202  
469-904-4550  
dcharest@burnscharest.com  
lvincent@burnscharest.com

*Co-Lead Counsel, Upstream Pre-Trial Discovery  
and Dispositive Motions*

*Co-Lead Counsel for Upstream Plaintiffs as to  
Jurisdictional Discovery, Motion to Dismiss, and  
Scheduling*

Charles Irvine  
Irvine & Conner PLLC  
4709 Austin Street  
Houston, Texas 77004  
713-533-1704  
charles@irvineconner.com

*Co-Lead Counsel, Upstream Pre-Trial Discovery  
and Dispositive Motions*

Edwin Armistead “Armi” Easterby  
Williams Hart Boundas Easterby, LLP  
8441 Gulf Freeway, Suite 600  
Houston, Texas 77017  
713-230-2200  
aeasterby@whlaw.com

*Co-Lead Counsel, Upstream Pre-Trial  
Discovery and Dispositive Motions*

### **CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that a true and correct copy of the foregoing instrument was served on all counsel of record in this Sub-Master Docket by filing it via the Court’s ECF system on March 18, 2022.

/s/ Daniel H. Charest

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